

REMARKS

Claims 1-21 are pending. Claims 1 and 6-9 are cancelled. Claims 2 and 3 are amended into independent form. Claims 15 and 18-21 are amended to address informalities therein, including correction of dependencies in claims 18-21. Payment is made herewith pursuant to 37 C.F.R. 1.20(d) for a Terminal Disclaimer previously filed October 29, 2004 in this application in order to obviate a non-statutory Double Patenting rejection of claims 1-21. Accordingly, entry of said Terminal Disclaimer, fee and this Amendment is respectfully requested.

In the event the Examiner determines that the foregoing claim amendments do not place this application in condition for allowance, entry of the amendments is nevertheless requested in order to place the claims in better form for consideration on appeal, should an appeal be pursued.

In the most recent Office Action, claims 1 and 6-9 are rejected as allegedly anticipated under 35 U.S.C. § 102(b) by, or in the alternative under 35 U.S.C. 103(a) as allegedly obvious over, Time Publication: Derek Gordon ("Too Big a Heart", 1997). The cancellation of claims 1 and 6-9 renders moot any rejection thereof. Accordingly, withdrawal of the 35 U.S.C. 102(b)/35U.S.C. 103(a) alternative rejections of claims 1 and 6-9 is respectfully requested.

Moreover, claims 2 and 3 have been rewritten into independent form to include features of an adjustable length band or an expansible member for determining the size or volume, respectively, of the left ventricle of the heart. The Time Publication: Derek Gordon ("Too Big a Heart", 1997) does not teach or suggest the combination of features recited in either of claims 2 and 3. Claim 4 depends from claim 3, and claim 5 depends from claim 4.

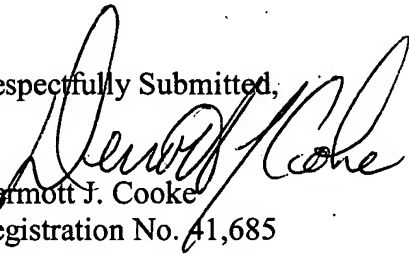
In the Office Action, claims 1-21 are further rejected under the judicially created doctrine of obviousness-type double patenting over the claims of U.S. Patent No. 6,125,852 to Stevens, et al. (hereinafter, "Stevens '852").

With respect to the rejection over Stevens '852, without acquiescing in the propriety of the rejection, nor admitting that the instant claims are obvious as alleged in the Office Action, applicants submitted a Terminal Disclaimer under 37 C.F.R. § 1.321 with the Amendment previously filed October 29, 2005. Payment of the prescribed fee under 37 C.F.R. 1.20(d) is made herewith for that previously filed Terminal Disclaimer. Entry of the Terminal Disclaimer and fee is thus respectfully requested to obviate any double patenting rejection asserted against the pending claims of this application.

In view of the amendments made herein, and the Terminal Disclaimer and requisite fee filed in this application, Applicants submit that claims 2-5 and 10-21 are patentable. Accordingly, allowance of claims 2-5 and 10-21 is respectfully solicited.

Should the examiner determines that anything further is desirable to place this application in even better form for allowance, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully Submitted,


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